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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/342,719	06/29/1999	DONALD C. ROE	7590Q	6995

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

EXAMINER

ANDERSON, CATHARINE L

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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10/16/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/342,719	Applicant(s) ROE ET AL.	
	Examiner Lynne Anderson	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-32,34-37,40-44,47,48,58-60 and 64-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-32,34-37,40-44,47,48,58-60 and 64-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 26 June 2008 have been fully considered but they are not persuasive.
2. In response to applicant's argument that Hashimoto fails to disclose the composition stored within the article prior to use, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.
3. The composition disclosed by Hashimoto is stored within the diaper assembly prior to first use of the article, and is fully capable of being stored within the diaper itself prior to a first excretion of waste for delivery after the excretion of waste.
4. The present amendment does not provide any additional physical limitations to the claimed invention, and only discloses a recitation of the intended use of the invention. Therefore, Hashimoto still fulfills the physical limitations of the claimed invention.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. Claims 28-32, 58, and 64-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. (5,681,297).

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7. Hashimoto discloses all aspects of the claimed invention with the exception of the waste contamination area and mass values. Hashimoto discloses a disposable article, as shown in figure 8, comprising a responsive system including a sensor 109 that detects an input when fecal waste is excreted and an actuator 108b that delivers a composition when the sensor detects an input, as disclosed in column 3, lines 42-60. Hashimoto further discloses a method of enhancing removability of waste by providing and using the article, as disclosed in column 2, lines 1-12. The composition is stored within, and in contact with, the diaper during the washing of the wearer of the diaper. The diaper comprises a topsheet 122 and leg cuffs 121a, as shown in figures 5 and 7, which contact the composition during the process of washing, as disclosed in column 3, lines 36-40, and therefore hold the composition storage.

8. It would have been obvious to one of ordinary skill in the art at the time of invention to provide the composition of Hashimoto with a Waste Contamination Area of less than 15 cm^2 and a Waste Contamination Mass of less than 14 mass units, since it has been held that where the general conditions of the claim are disclosed in the prior art (i.e. the desire to enhance the removability of and to remove fecal waste), finding the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

9. Claims 34-37, 40-44, 47-48, and 59-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hashimoto et al. (5,681,297) in view of Jones et al. (5,482,714).

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10. Hashimoto discloses all aspects of the claimed invention with the exception of the composition comprising a feces modifying agent, a skin care composition, and a thickener. The composition of Hashimoto is provided to cleanse fecal waste from the wearer of the article, as disclosed in column 3, lines 54-60.

11. Jones teaches a composition for cleansing skin that has contacted fecal waste, the composition comprising a silicone oil (see column 4, lines 35-44), Al_2O_3 (see column 3, line 26), and a thickener (see column 3, lines 13-14). The composition provides a skin care benefit and protects the skin from irritation caused by fecal waste, as disclosed in column 1, lines 49-56.

12. It would therefore be obvious to one of ordinary skill in the art at the time of invention to include a skin care composition in the cleansing composition of Hashimoto, as taught by Jones, to protect the skin from irritation by fecal waste.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynne Anderson whose telephone number is (571)272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/L. A./

Examiner, Art Unit 3761

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761